

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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RUTHANN C. CALLAHAN,

Plaintiff, ADOPTION ORDER
 17-CV-4920 (JS) (AKT)

-against-

NANCY A. BERRYHILL, Acting
Commissioner, Social Security
Administration,

Defendant.

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APPEARANCES:

For Plaintiff: Charles E. Binder, Esq.
 Law Office of Charles E. Binder
 and Harry J. Binder
 485 Madison Avenue, Suite 501
 New York, New York 10022

For Defendant: Jason Peck, Esq.
 United States Attorney's Office
 Eastern District of New York
 271 Cadman Plaza East, 7th Fl
 Brooklyn, New York 11201

SEYBERT, District Judge:

On August 21, 2017, Plaintiff Ruthann Callahan (the "Plaintiff" or "Claimant") commenced this appeal pursuant to the Social Security Act, 42 U.S.C. § 405 et seq., challenging a final determination by the Defendant, Nancy A. Berryhill,¹ then-Acting Commissioner of the Social Security Administration

¹ Andrew M. Saul is now the Commissioner of the Social Security Administration. Pursuant to Federal Rule of Civil Procedure ("FED. R. CIV. P.") 25(d), Saul is hereby substituted for Nancy A. Berryhill as the defendant in this action. See, e.g., Pelaez v. Berryhill, No. 12-CV-7796, 2017 WL 6389162 (S.D.N.Y. Dec. 14, 2017), adopted by, 2018 WL 318478 (S.D.N.Y. Jan. 3, 2018).

("Defendant" or the "Commissioner"), that she was ineligible to receive Social Security disability benefits. (Compl., D.E. 1.)

The Plaintiff moved, pursuant to FED. R. CIV. P. 12(c) for a judgment on the pleadings. (Pl. Mot., D.E. 15.) Defendant cross-moved for a judgment on the pleadings. (Def. Mot., D.E. 17.) On April 2, 2019, the Honorable Arthur D. Spatt² referred the parties' cross motions to United States Magistrate Judge A. Kathleen Tomlinson for a Report and Recommendation as to whether either of the cross-motions should be granted, and if so, what relief should be ordered. (Ref. Order, D.E. 22.) On August 11, 2020, Judge Tomlinson issued her Report and Recommendation ("R&R"), recommending that the Court grant Plaintiff's motion, deny the Commissioner's cross-motion, and remand the case to the Administrative Law Judge ("ALJ") for further proceedings. (R&R, D.E. 24.) Judge Tomlinson based this recommendation on the ALJ's committing multiple errors in his decision:

Remand for further proceedings is generally the appropriate form of relief "in cases in which the Commissioner has failed to provide a full and fair hearing, to make explicit findings, or to have correctly applied the . . . regulations." Here, where the ALJ misapplied the Commissioner's own regulation, i.e., the treating physician rule, the exercise of remanding for further proceedings is far from an academic exercise and could lead to a different result. The ALJ's re-application of the treating

² The case was reassigned from Judge Spatt to the undersigned on June 29, 2020.

physician rule could not only impact his weighting of Dr. Torelli's opinion, but his weighting of Dr. Pollack's opinion as well. Moreover, the Court identified an omission in the ALJ's credibility finding as to Plaintiff's intermittent orthopedic care which should be further developed as well. Thus, the Court finds that remand for further proceedings is appropriate in this case.

(R&R at 47-48 (internal citations omitted; emphasis and ellipsis in original).)

More than fourteen days have elapsed since the publication of the R&R. The parties have not filed objections. As such, pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, the Court has reviewed the R&R for clear error, and, finding none, now concurs in both its reasoning and its result. See Off. Comm. of Unsecured Creditors of Exeter Holding, Ltd. v. Haltman, No. 13-CV-5475, 2020 WL 2832192, at *4 (E.D.N.Y. June 1, 2020) (reviewing R&R without objections for clear error); Coburn v. P.N. Fin., No. 13-CV-1006, 2015 WL 520346, at *1 (E.D.N.Y. Feb. 9, 2015) (same).

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Accordingly, the R&R (D.E. 24) is ADOPTED in its entirety. Plaintiff's motion for judgment on the pleadings (D.E. 15) is GRANTED, Defendant's cross-motion for judgment on the pleadings (D.E. 17) is DENIED, and the case is REMANDED for further proceedings. The Clerk of the Court is respectfully directed to substitute Andrew M. Saul for Nancy A. Berryhill as the defendant in this action and shall mark this case CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: October 22, 2020
Central Islip, New York